

10/701,194

REMARKS

Upon reviewing this application, it has come to the attention of the undersigned that all of the prior art which was timely and properly made of record in this case has not been substantively considered by the Examiner. Specifically, the Applicant prepared and timely filed an Information Disclosure Statement, along with PTO Form-1449 and copies of the necessary citation (a copy of the returned postcard, the submitted Statement and PTO-1449 is attached, if copies of the citations are again required, please immediately contact the undersigned), under a December 18, 2003 Certification Mailing Date. The Examiner has not confirmed to the undersigned, by signing and returning a copy of PTO Form-1449, that such references were substantively considered. Accordingly, the Applicant respectfully requests the Examiner consider the same at this time.

It is submitted that the allowed claims are distinguishable over all of the prior art of record, including these references which were not previously considered. However, in the event that the Examiner believes further prosecution of this application is warranted in view of this newly considered art, the Examiner is invited to withdraw this case from issue and provide the Applicant with a further action on the merits.

As all of this prior art was previously made of record in this case in a timely manner, it is respectfully submitted that Petition and/or an official fee is not necessary and the Examiner is required to substantively consider the same at this time. If any further action on the part of the Applicant is required in order for the Examiner to substantively consider this art, the Examiner is respectfully requested to contact the undersigned attorney immediately.

Turning to the continued rejection of claims 13-32, under 35 U.S.C. § 103(a), as being unpatentable over Kawai '827 in view of Anderson '429, the Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

The Applicant's hereby incorporates by reference the previously submitted arguments relative to the uncombinable nature of the references from the response of July 15, 2004.

10/701,194

These arguments were not considered by the Examiner to be persuasive (page 3 lines 13-14), and for sake of brevity the Applicant will not reiterate those previous remarks.

Further to the previous arguments, and as the Examiner is aware, in order to properly support an obviousness rejection under 35 U.S.C. § 103(a) the cited references must provide some disclosure, teaching or suggestion which would lead one of ordinary skill in the art to combine the references.

In discussing its reversal of certain obviousness rejections, the federal courts have oft recounted the fact that references cannot be indiscriminately combined, "In concluding that obviousness was established by the teachings in various pairs of references, the district court lost sight of the principle that there must have been something present in those teachings to suggest to one skilled in the art that the claimed invention before the court would have been obvious." W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 220 USPQ 303, 311 (CAFC 1983). "It is settled law that references may be combined to anticipate an applicant's claims, but not in the event 'there is no suggestion in the references that they be combined to produce applicant's results.'" In re Shaffer, 29 F.2d 476, 108 USPQ 326 (1956), and In re Hortman, 264 F.2d 911, 121 USPQ 218 (1959)." Multifastener Corporation et al. v. Commissioner of Patents, 141 USPQ 427, 429 (DC, District of Columbia 1964).

Besides the fact that each of the presently cited references are in and of themselves complete, providing no disclosure or teaching that the connection to the underlying support could be made in some other manner or by some other structure, the Applicant points out that these references teach expressly away from one another.

Anderson '429 at column 1, lines 14-20 specifically recites "In the prior art of which I am aware, interlocking slots and the like are provided, whereby the rack is inserted into the channel and then rotated or swung to [a] locked position, but these have the disadvantage that manipulation of the rack in this manner is sometimes difficult because of cramped quarters". Lines 24-28 continue to explain that "Removal of such brackets is also made difficult because of the interlocking placements under existing cable lines is therefore not easily accomplished".

10/701,194

Lines 34-39 state that "The bracket portion of the rack of the present invention is not interlocked with the anchoring means, but merely drops into clamped engagement therewith when inserted in its normal operative position with respect to the cable".

In other words, although the rack or bracket 15 of Anderson '429 is able to support a cable 19 as shown in Figs. 1 and 4, the rack 15 is loosely secured to the underlying support 10 for the express reason of "... rotation or manipulation of the bracket portion thereof, thus facilitating its use in constricted areas. . ." as discussed in Anderson '429 at column 1, lines 43-51.

Teaching specifically away from Anderson '429, and contrary to the teachings therein, the clamping device of Kawai '827 is explicitly interlocked and firmly fixed with the board 2, as it is, in its very nature and function expressly entitled a "Clamp Device". The Abstract of Kawai '827 expressly describes "A clamp device which can be easily attached/detached and securely fixed to a board". The Abstract further explains that, "Once rotated an engagement protrusion comes to rest in an engagement hole of the board preventing further rotation and firmly fixing the clamp device relatively to the board". The summary of the invention further explicates the interlocked nature of the Kawai '827 clamp "...with the engagement protrusion engaged in the engagement hole, the portion of the board around the hole being held between the base and the engaging protruding piece, and the tip end of the pressing wing portion abutting and pressing on a topside of the board, the clamp device is firmly fixed to the board". column 2, lines 8-13.

Thus, these two references directly teach away from one another and thus according to case law as described above, Anderson '429 and Kawai '827 are certainly not combinable as asserted by the Examiner.

Even if these references were combinable, and this is certainly not the case in view of the specific disclosures of these references, neither of the references either alone or in combination discloses an offset disc as currently claimed by the Applicant. The Examiner states that Anderson '429 teaches an offset disc as claimed in the current invention. However,

10/701;194

the disc 25' of Anderson '429 is in line with the central axis of the main body 15. It is particularly different than the disc of the current invention in which "...the disc portion defines a disc axis which is offset from the central axis of the main body..." as specifically recited in Applicant's claim 13.

Kawai '827 also does not teach or suggest the disc in which the central axis of the body is offset from the central axis of the disc.

In other words, in the current invention as shown in Fig. 1, the central axis C1 of the disc 13 is offset from the central axis C2 of the main body 3 of the fixing member 1. Therefore, the distance from the disc 13 to one of the elastically deformable portions 15 (including one of the projections 17) and the distance from the disc 13 to the other of the elastically deformable portions 15 (including the other of the projections 17) are different.

As shown in Fig. 2A, two locating holes H2 can be provided at a position equally spaced from one attachment hole H1 in the plate 30 to which the fixing member 1 is attached. The locating holes H2 are holes into which the projections 17 are fit, i.e., engaged, and the attachment hole H1 is a hole into which the disc 13 is fit. When the disc 13 of the fixing member 1 is inserted into the attachment hole H1, the fixing member 1 can be attached without considering which direction the fixing member 1 is slid, that is, by providing one of the locating holes H2 at a position in which one of the projections 17 is engaged when the fixing member 1 is slid in one direction or the other of the locating holes H2 at a position in which the other of the projections 17 is engaged when the fixing member 1 is reversed and slid to a direction opposite to the aforesaid direction. Accordingly, the fixing member of the current invention offers greater freedom of attachment of the fixing member 1 to the plate 30. Also regardless of which direction the fixing member 1 is slid, the fixing member is attached in a single position.

On the other hand, in the fixing member of Kawai '827, the slide direction when the fixing member is attached to the plate is the same with the slide direction when the fixing member is reversed and attached to the plate. Therefore, the fixing member of Kawai '827 has less freedom of attachment, compared to the fixing member of the current invention. Also, in

10/701,194

Anderson '429, when the main body 15' is reversed to be attached to the plate 18, the position of the main body 15' is different from the position prior to the reverse. This is because, as can be seen in Fig. 5 of Anderson '429, cutouts provided in the legs of the main body 15' are open to the same direction and the center of the disc 25' coincides with the axial line of the main body 15'.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised obviousness rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Anderson '429 and Kawai '827 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

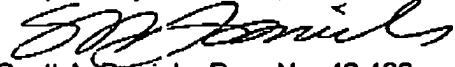
In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

10/701,194

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



Scott A. Daniels, Reg. No. 42,462
Customer No. 020210
Davis & Bujold, P.L.L.C.
Fourth Floor
500 North Commercial Street
Manchester NH 03101-1151
Telephone 603-624-9220
Facsimile 603-624-9229
E-mail: patent@davisandbujold.com